U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28358822

Date: NOV. 6, 2023

Appeal of Mount Laurel, New York Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of Ecuador currently residing in the United States, has applied to adjust status to that of a lawful permanent resident (LPR). A noncitizen seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for alien smuggling and fraud or misrepresentation and seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) sections 212(d)(11), (i), 8 U.S.C. § 1182(d)(11), (i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver under section 212(i) of the Act if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives and under section 212(d)(11) of the act to serve humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, if the individual smuggled was at that time a qualifying relative.

The Director of the Mount Laurel, New York Field Office denied the application, concluding that the record did not establish that his LPR spouse would experience extreme hardship if he were denied admission to the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant asserts that he has established extreme hardship to his LPR spouse and that the Director did not consider all of the evidence of extreme hardship.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the noncitizen. Section 212(i) of the Act.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered "extreme," the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the "common result of deportation" and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

Once the noncitizen demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. The burden is on the noncitizen to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez*, 21 I&N 296, 299 (BIA 1996). We must balance the adverse factors evidencing an applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted).

II. ANALYSIS

The Applicant does not contest his inadmissibility on appeal and we incorporate the Director's inadmissibility finding here by reference.[1] On appeal the Applicant states that his spouse would suffer extreme emotional, psychological, medical and economic hardship if he were denied admission to the United States.

An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant, and 2) if the qualifying relative relocates overseas with the applicant. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual. Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. *See id.* The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See id.* Here, the Applicant argues that his spouse would experience extreme hardship in both scenarios. Therefore, the Applicant must establish extreme hardship to his LPR spouse if he were returned to Ecuador and his spouse would remain in the United States, and if the couple were to relocate to Ecuador together.

A. Extreme Hardship upon Separation

In his submission to the Director, the Applicant claimed that his spouse would experience extreme emotional and economic hardship if he were removed from the United States and she remained behind

[1] The Applicant has admitted to filing an application for adjustment of status under the LIFE act with falsified documents. In addition, the Applicant has admitted to paying a smuggler to bring his two sons to the United States in violation of the Act.

without him. As evidence of extreme emotional hardship, the Applicant provided to the Director a personal statement, a statement from his LPR spouse, statements from his U.S. citizen children, and a psychological evaluation for his spouse. In his letter to the Director, the Applicant stated that he and his spouse depend on one another for support, that he is the main source of income for the family, that his spouse would be unable to support herself on her income alone, and that he works hard to support his children in reaching their goals. In her statement to the Director, the Applicant's spouse stated that the Applicant has always been the pillar of the family and emotional support, separating from one another would hurt her psychologically, she has trouble sleeping and feels sad as a result of the Applicant's immigration status, and that she would be unable to support herself and her children financially without the Applicant. The Applicant's son, J-M-[2], provided details regarding the Applicant's character and his efforts to be good parent and spouse. The Applicant's youngest child, A-M-, provided a similar description of the Applicant's dedication to his family and the loss the family would feel if he were to be denied admission to the United States. The psychological assessment diagnoses the Applicant's spouse with Adjustment Disorder with Mixed Anxiety as a result of the Applicant's current immigration status. The Applicant also provided the Director with evidence of financial hardship including a closing cost estimate for purchase of a new house, tax documents, a credit card statement from 2019, utility bills from 2019, evidence of charitable giving, and a cost breakdown for A-M-'s college tuition.

On appeal, the Applicant re-iterates the claims made to the Director and submits new statements from each of the family members identified above. The Applicant's spouse again states that losing the Applicant would result in a deep depression and she would fear for his safety in Ecuador due to ongoing violence. She further states that her psychological condition would make it extremely difficult for her to work multiple jobs in her spouse's absence.

The letters from the Applicant's children argue that the stress and emotional damage their mother would suffer as a result of their father's removal was not properly analyzed by the Director. We acknowledge the claims made by the Applicant and his family members along with the findings of the psychological assessment, however, the Applicant has not established that his spouse would experience hardship that is over and above that normally associated with separation from a loved one. *See Matter of Pilch*, 21 I&N Dec. at 630-31. Both the Applicant and his spouse discuss the effects of deportation on their adult children, however, hardship to non-qualifying relatives may only be considered in as much as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002). We acknowledge the claims of the Applicant's children regarding separation from their father, however, the Applicant has not demonstrated that the hardship to his children would result in extreme hardship to the qualifying relative, his LPR spouse.

Regarding extreme financial hardship on appeal, the Applicant provided evidence of his spouse's income but did not provide updated financial documentation. The Applicant further notes that A-M- is now a member of the U.S. Air Force and no longer attending college. While the tax returns indicate that both the Applicant and his spouse contribute to the household finances, loss of the Applicant's income alone is not sufficient to establish that the Applicant's spouse would experience extreme financial hardship. Moreover, the Applicant has not addressed whether his spouse has any other sources of income available, such as social security, retirement accounts, or other forms of savings.

[2] We use initials to protect the privacy of individuals.

The Applicant's children are both over 21 years of age and employed with the U.S. military. In particular, J-M- has already demonstrated his ability to support his parents with the submission of the Form I-864, Affidavit of Support, as part of the Applicant's application for adjustment of status. The Applicant has not addressed whether his children would assist their mother should she lose his income. Finally, the Applicant claims that their monthly expenses total more than $3,700 but did not submit documentary evidence regarding the couple's current financial obligations beyond a few monthly bills from 2019. As such, the record does not sufficiently establish the current financial circumstances of the Applicant's spouse. We acknowledge that his spouse's finances may be negatively impacted by the Applicant's relocation to Ecuador, however, the record does not establish that the Applicant's spouse would be unable to provide for herself or meet her current financial obligations resulting in extreme financial hardship if the Applicant were denied admission to the United States.

The Applicant states for the first time on appeal that his spouse would experience medical hardship upon separation because she was diagnosed with skin cancer in 2012. Based on the Applicant's statement and the statement of his spouse, the cancer is now in remission. The Applicant stated that he would worry about his spouse's health, yet he has not provided evidence to show whether related follow-up care is needed, or whether his absence would impact his spouse's medical condition.

We acknowledge that the Applicant's spouse may experience financial and emotional hardship as a result of denial of admission, however, the evidence in the record does not sufficiently establish, either individually or collectively, that the financial, medical, and emotional effects of separation from the Applicant would be more serious than the type of hardship normally suffered when one is faced with the prospect of separation from one's spouse. *See Matter of Pilch*, 21 I&N Dec. at 630-31. Accordingly, the Applicant has not established eligibility for a waiver of inadmissibility under section 212(h) of the Act.

B. Evidence of Extreme Hardship upon Relocation and Eligibility for a waiver under section 212(d)(11) of the Act

The Applicant has not established extreme hardship upon separation from his spouse, therefore, we need not reach and hereby reserve the Applicant's arguments regarding extreme hardship upon relocation, eligibility for a waiver under section 212(d)((11) of the Act, and whether the Applicant warrants a favorable exercise of discretion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof). The waiver application will remain denied.

ORDER: The appeal is dismissed.